David Andrew Wilson
1501 E. Jefferson St
Seattle Wa 98122
(206) 512-4699
iamdavidandrewwilson@gmail.com

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M. L. HATCHER, CLK
U.S. BANKRUPTCY COURT
W.D. OF WA AT SEATTLE
BY______ DEP CLK.

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

In Re:
David Andrew Wilson) CASE NO. 17-10262
Debtor,) Chapter 7
)
David Andrew Wilson) ADV. NO:
Plaintiff,) COMPLAINT TO DETERMINE
v.) DISCHARGEABILITY OF A
US DEPARTMENT OF EDUCATION;) DEBT (STUDENT LOANS)
LOAN SCIENCE, LLC; EDUCATION FINANCE)
PARTNERS; NAVIENT PRIVATE LOAN TRUST;)
Defendant(s),)
)

I. PARTIES

1.1 David Andrew Wilson is the debtor herein (hereafter "Plaintiff") , and he filed for relief under Chapter 7 of the Bankruptcy Code (11 USC) on 1-23-2017.

1.2 US DEPARTMENT OF EDUCATION, LOAN SCIENCE, LLC, EDUCATION FINANCE PARTNERS, and NAVIENT PRIVATE LOAN TRUST are the defendants herein.

1.3 Jurisdiction in these proceedings is vested in the above entitled court pursuant to 28 U.S.C. Sections 157, 1334, and 11 U.S.C. 523(c)(1).

1.4 Venue is in the United States Bankruptcy Court Western District of Washington pursuant to 28 U.S.C. 1409(a).

1.5 This Plaintiff does consent to entry of final orders or judgment by the bankruptcy court pursuant to FRBP 7008.

II. FACTS

2.1 A. The Plaintiff incurred obligations presently owing to the defendant US Department of Education owing approximately at this time $385,866.49 and who's address includes 400 Maryland Ave SW, Washington DC 20202; said loan is being serviced by Nelnet; said loan requires monthly payment of $33.53 as of the petition date;

B. The Plaintiff incurred obligations presently owing to the defendant NAVIENT Private Loan Trust owing approximately at this time $72,000 and who's address includes POB 9640, Wilkes Barre PA 18773, said loan is being serviced by Navient; said two loans require monthly payments of both $218.49 and $271.80 as of the petition date herein; Said loans are private loans, not federal.

C. The Plaintiff incurred obligations presently owing to the defendant Loan Science, LLC owing approximately at this time $21,9395 and who's address includes POB 81671, Austin, Tx 78708, said loan was being serviced by ACS said loan required monthly payments of $228.01 as of the petition date herein; now said loan is serviced by NAVIENT , said loan is private, not federal; said loan has Guarantor of Education Finance Partners which itself filed chapter 7 bankruptcy. Loan Science, LLC has acquired all ownership rights of Education Finance Partners.

2.2 Said loan is believed to be for an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded

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in whole or in part by a governmental unit, or for an obligation to repay funds received as an educational benefit, scholarship or stipend, as described in 11 U.S.C. 523(a)(8).

2.3 On 1-23-17, the debtor filed for relief under Chapter 7of the U.S. Bankruptcy Code. NCS debt was listed as creditors in Schedule F filed herein as well as their servicers.

2.4 That the debtor is single and aged 38 with no children.

2.5 That to not discharge these student loans would impose an undue hardship on this defendant.

2.6 A discharge is expected in this case in early May, 2017.

2.7 The Plaintiff has substantial medical problem, commonly known as "AIDS". Specifically, three years ago I became HIV positive. HIV is the virus that causes AIDS. AIDS is a complete shutdown of one's immune system, leaving the person vulnerable and unable to defend oneself from other diseases. Some cases of HIV are easily managed by medicine, and some cases are extremely difficult and progress rapidly to AIDS. My case of HIV is of the latter and rapidly progressed towards AIDS. I have had an extremely difficult time with my health and would like to detail the facts of this health problem, which is burden upon my life that I must live with. There is no cure for HIV or AIDS.

2.8 When I was diagnosed as being HIV positive, I immediately progressed to full blown AIDS, in less than a month. This is not common. My immune system shut down and I was extremely sick for 4 months, unable to care for myself, and moved back in with family.

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I had very high fevers, and day and night sweats. The inside of my mouth and throat were covered in open sores that would not heal, I could not eat and existed only on liquids, and lost approximately 30 pounds of body weight. My body was covered in skin rashes which itched so badly I scratched myself until the point of bleeding daily. I was unable to get up to use the bathroom by myself and my parents had to assist me. I had colds and various infections. After months of medication my body responded slightly and I crested just above the diagnosis level for AIDS. Even after taking medication faithfully daily for 3 years, I have barely recovered, teetering on the edge of having full blown AIDS.

2.9 I have an unusually low T-cell (CD4/CD8) count that has not increased in response to medication for over 3 years. T-cells are white blood cells that direct the immune system and are a reference point for immune health. A healthy person should have anywhere in a window between 730 to 2,250 t-cells per cubic millimeter of blood. My t-cell count is 255, severely below the safe healthy limit, as of my last blood test on 9/29/16. The threshold to diagnose full blown AIDS is 200 or below. My t-cell count is barely hovering above full blown AIDS, even with medication. In other words, my immune system is quite damaged and is not recovering in response to medication, and I continue to live on the threshold of having full blown AIDS again.

2.10. I have an unusually aggressive strain of HIV virus that mutates often and has become resistant to 5 different pharmaceutical drug combinations, meaning I have failed these meds and they

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will no longer work for me. My virus has adapted to render these medications as useless. Not only have I failed individual HIV medications, but also the entire class/family of medications these drugs belong to. There is only a finite amount of HIV drug medications available, and my options are rapidly dwindling. If my virus continues the trend of mutating and developing resistance to my medication regime, and I fail my current meds, I will only have a few options left. If the time comes that I run out of these options, my immune system will completely fail, I will progress to full blown AIDS again, and will become terminally ill. The medication I take is not completely effective and my strain of virus has become difficult to suppress.

2.11. Because none of the medications I have taken are able to fully suppress my HIV virus, I still have what's called a viral load. A viral load is how many copies of the HIV virus are flowing through my bloodstream at any given time. Most people become "undetectable" after taking a regular pharmaceutical regime, which means nearly all of their HIV virus has been suppressed. Due to the aggressive nature of my HIV viral strain, my system still has a viral load that is not being suppressed, and the doctors don't know why. This remaining unsuppressable viral load has a detrimental effect on my body, continuing to actively damage my immune system further.

2.12. The medication I take is an aggressive treatment regime, meaning it has quite a few serious side effects, and has the potential to cause permanent organ damage. I have no other choice but to take it.

2.13. I am immunocompromised. This means my immune system is extremely weak, barely

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functioning, and I get sick often. When I do get sick, it takes me much longer than healthy people to heal, it can take me weeks to get over a common cold, even longer for the flu. Doing massage for a living, I am in close contact with people's bodies and am exposed often to others' common illnesses. Being sick often significantly impacts my ability to support myself and be financially sustainable. I lose money from not being at work, and being sick too often can threaten my job security.

2.14. Because of my weak immune system, viral load, and the medication I take, I suffer from extreme exhaustion; I am tired constantly, never feeling like my body can renew itself. I require much more sleep than the average person, ~10-11 hours per day. When I wake up I still don't feel completely rested. I also suffer from constant skin rashes and skin problems. I also suffer from constant digestive problems, affecting both my stomach and my bowel habits. I am nauseated on a daily basis, have a reduced appetite, and have painful and sudden diarrhea on a daily basis. I also suffer from headaches, light headedness, and anxiety.

2.15 . Because of my longstanding weak immune system, I am at a high risk for developing major problems in the future, such as cancer, along with a host of other diseases. My body simply does not have the immune resources to keep myself healthy and fend off disease.

2.16. The medication regime I take is extremely expensive. I take four HIV medications currently, Truvada, Tivicay, Prezista, and Tybost. According to price guide on drugs.com, the average low end retail price of a 1 month supply (30 pills) of Truvada 200mg is $1,564.09, for Tivicay 50mg is $1,637.66, for Prezista 800mg is $1,562.36, and Tybost 150mg is so new on the market that a

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monthly price is not listed. Just counting the first three, my medication regime costs $4,764.11 per month. Thankfully, I qualify for state assistance in paying for my medication because I am low income. Also, because I am low income and have HIV/AIDS, I qualify for subsidized healthcare through state and federal programs. If my income does ever increase, the government will require me to first pay my fair share of insurance premiums and second to pay my fair share of the cost of my medication before I could ever pay money towards any outstanding debts.

2.17 For the last 3 years since becoming HIV positive and then having full blown AIDS, I have lost my health. This impacts my life on all levels, and is a burden I will have to bear for the rest of my life as there is no cure for HIV or AIDS. Being constantly exhausted, nauseated, light headed, anxious, with skin problems and digestive issues makes it difficult to work and support myself. This is not for lack of trying, as I do push myself as hard as I can to try to have a life and be self sufficient; I work three part time jobs and manage to eke by although I am low income. The work I do, massage and cleaning, is physically demanding and I am currently at my limit in terms of physical capacity to work and make money, and this will not change for the foreseeable future. My problematic health, limited income, and the amount of debt I am in impacts me significantly on an emotional level. I am depressed and anxious about my situation in life, and I feel hopeless about my prospects for my future.

III. THEORIES OF LIABILITY, DISCHARGE

3.1 That the plaintiff is and shall be discharged from a debt evidenced by the loans in

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paragraph 2.1 herein pursuant to 11 U.S.C. 523(a)(8) as in effect at the time of the petition herein; Section 523(a)(8)

3.2 That upon discharge by the above captioned bankruptcy court the plaintiff is entitled to that relief set forth in 11 U.S.C. 524(a).

3.3 That in the event the defendant willfully violates the provisions of 11 U.S.C. 362, the plaintiff if injured, shall be entitled to a judgment against defendant for actual damages, including costs and attorney's fees, and punitive damages.

IV. PRAYER

WHEREFORE, the debtor, prays for the following relief:

1. An order determining the debt owed to the defendants herein be determined to be dischargeable and thereby discharged pursuant to 11 U.S.C. § 523(a)(8) ;

2. For such other and further relief as the Court may deem just.

3. For an order providing that no payments are due on said loans and thus not late as of the petition date herein so that post petition payments falling due are not reported as late on credit reports for months and years post - petition.

DATED THIS 12th DAY OF APRIL, 2017

David Andrew Wilson, Pro Se
1501 E. Jefferson St
Seattle Wa 98122
(206) 512-4699 iamdavidandrewwilson@gmail.com

RECEIVED
Western District of Washington
at Seattle

MAR 12 2017

MARK L. HATCHER, CLERK
OF THE BANKRUPTCY COURT

B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS David Andrew Wilson	**DEFENDANTS** US DEPARTMENT OF EDUCATION; LOAN SCIENCE, LLC; EDUCATION FINANCE; PARTNERS; Navient PRIVATE LOAN TRUST
ATTORNEYS (Firm Name, Address, and Telephone No.)	**ATTORNEYS** (If Known)
PARTY (Check One Box Only) ☑ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☐ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☑ Creditor ☐ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

11 USC 523(a)(8) (student loan discharge)

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☐ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☑ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☐ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $discharge student loans

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR David Andrew WIlson	BANKRUPTCY CASE NO. 17-10262	
DISTRICT IN WHICH CASE IS PENDING Western District of Washington	DIVISION OFFICE Seattle	NAME OF JUDGE T. W. Dore
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) David A Wilson		
DATE	PRINT NAME OF ATTORNEY (OR PLAINTIFF) David Andrew Wilson	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.